

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

CRIMINAL APPEAL No. 699 OF 2002

APPELLANT :
ACCUSED

Ram Nihora alias Mogo Yadav,
son of Panchu Yadav, aged
about 26 years, occupation: Agriculture,
resident of village Jholna,
Police Outpost: Garo,
Police Thana: Nandghat,
Dist: Durg (Chhattisgarh).

Versus

RESPONDENT :

The State of Chhattisgarh:
Through: Station House Officer,
Police Station: Nandghat,
Dist: Durg (Chhattisgarh).

CRIMINAL APPEAL U/S 374 of Cr.P.C.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 699/2002

Ram Nihora @ Mogo Yadav

Vs.

State of Chhattisgarh

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Present: -

Shri Abhay Tiwari, learned counsel for the appellant.

Shri J.D.Bajpai, Govt. Advocate/Additional Public Prosecutor for the State.

JUDGMENT

(Delivered on 06-01-2006)

1. This appeal is directed against the judgment dated 27-06-2002 / passed by Shri H.L.Warde, Second Additional Sessions Judge, (F.T.C.), Bemetara, District-Durg in Sessions Case No.422/2001 whereby the appellant was convicted under Section-450 & 376 (1) of the I.P.C. and was sentenced to rigorous imprisonment for 3 years and fine of Rs. 1500/- in default of payment of fine to undergo additional rigorous imprisonment for 3 months under Section-450 of the I.P.C. and to rigorous imprisonment for 7 years and a fine of Rs. 3500/- in default of payment of fine to undergo additional rigorous imprisonment for 6 months under Section-376 (1) of the I.P.C.

2. Briefly stated the prosecution story is that Shyama Bai aged about 30 years is the daughter of Feru Ram PW-2. Although Shyama Bai had grown in age yet her mental and physical development was deficient. As the learned trial Judge has observed while recording her evidence that her height was only 3 & $\frac{1}{2}$ feet and she was stammering in her speech. On 27-07-2001 when Feru Ram returned home he found that Shyama Bai who was all alone in the house was crying and her underwear and frock were blood stained and there was some blood on her thighs also. Shyama Bai told him that while she was alone, the accused appellant Ram Nihora came inside the house, lifted her, took her inside the Kothar and removing her underwear committed rape on her. First Information Report was lodged promptly by Feru Ram Yadav in Police Station-Nandghat(situated about 22 kilometers north from the place of occurrence) on 27-07-2001 at 07.10 P.M. Upon medical examination of Shyama Bai Dr. Rajshri Deodhar PW-7 found that clotted blood was present on both folds of groitus and thighs. Hymen was perforated. One finger could be inserted with difficulty in the vagina. The underwear and frock worn by Shyama bai as well as underwear and towel belonging to the accused-appellant were seized during investigation. The report of Forensic Science Laboratory, Raipur Ex.P-14 confirmed presence of blood, semen and spermatozoa in the Frock and underwear seized from the prosecutrix. After completion of investigation, the appellant was prosecuted for the offences punishable

under Section-450 & 376 (1) of the I.P.C. The accused-appellant abjured the guilt, pleaded innocence and examined Jatiram DW-1 in defence.

3. The Trial Court examined as many as 11 witnesses in support of the prosecution story. Relying upon the un rebutted testimony of Shyama Bai which was duly corroborated by the medical evidence and the report of Forensic Science Laboratory, the trial Court convicted the appellant under Section-450 & 376(1) of the I.P.C. and sentenced him as aforesaid.
4. Learned counsel for the appellant has assailed the conviction of the appellant under Section-450 & 376(1) of the I.P.C. on the ground that the prosecutrix was aged 30 years and the appellant was much lesser in age, therefore, it would be improbable that the appellant had committed rape on the prosecutrix. Referring to Para-9 of the testimony of the prosecutrix, learned counsel for the appellant argued that the possibility of consent of the prosecutrix in the sexual intercourse could not be ruled out. The fact that the prosecutrix did not raise any hue or cry during the occurrence was also indicative of her consent in the sexual act. Referring to para-14 of the testimony of Dr. Rajshri Deodhar PW-7 it was also argued that the medical evidence did not support the story of rape on 27-07-2001 at 9 A.M. On the other hand, Shri J.D.Bajpai, Govt. Advocate/Additional Public Prosecutor has supported the impugned judgment.

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(4)

5. The demeanor of the prosecutrix was noted by the Learned Trial Judge during her evidence which clearly showed that although she had grown in age but her physical and mental development was not normal. Even at the age of 30 years, the prosecutrix shall wore a frock, and her height being only 3 $\frac{1}{2}$ feet. Feru Ram Yadav PW-2 father of the applicant has also deposed in para-5 that since physical and mental development of prosecutrix Shyama Bai was not normal he did not get her married. Dr. Rajshri Deodhar PW-7 has also testified that on examination she found that the mental development of Shyama bai had not taken place. Thus, it clearly emerges that the prosecutrix lacked normal, mental and physical growth.

6. It is settled law that conviction for the offences punishable under Section-450 & 376 (1) of the I.P.C. can be based on the sole testimony of the prosecutrix if it inspires confidence, stands unrebutted in cross-examination and is dully supported by medical evidence. No further corroboration would be required if the above conditions are satisfied. Viewed from this legal perspective, the testimony of Shyama Bai is wholly unrebutted. Nothing has been elicited in cross-examination which would render her testimony in para-3 that the accused appellant entered the house, lifted her and took her to Kothar and thereafter the accused-appellant removed her underwear and committed rape on her, unworthy of credit. So far as the statement of the prosecutrix that she did not prevent the accused

appellant from committing rape is concerned, it is satisfactorily explained by the fact that the mental and physical growth of the prosecutrix was not normal. The testimony of prosecutrix is duly corroborated by Dr. Rajshri Deodhar PW-7 who found presence of clotted blood at both folds of groitus and thighs and also found that hymen was perforated. The argument that the appellant could not commit rape since he was much lesser in age than the prosecutrix is unacceptable. The evidence clearly shows that the accused-appellant took advantage of the prosecutrix being alone in the house and after entering the house committed rape on her.

7. Having considered the evidence led by the prosecution in its entirety and also the rival submissions, I am of the considered opinion that the Trial Court has rightly convicted the appellant under Section-450 & 376 (1) of the I.P.C. upon legal, reliable and unimpeachable evidence. So far as the sentence awarded to the appellant is concerned it also does not call for any interference. The appeal is devoid of merit and is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge